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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 U.S. SECURITIES AND EXCHANGE
4 COMMISSION,

Plaintiff,

v.

19 Civ. 5244 (AKH)

6 KIK INTERACTIVE INC.,

7 Defendant.

Conference

8 -----x

9 New York, N.Y.
10 January 22, 2020
2:42 p.m.

11 Before:

12 HON. ALVIN K. HELLERSTEIN,

13 District Judge

14 APPEARANCES

15 U.S. SECURITIES AND EXCHANGE COMMISSION
16 DIVISION OF ENFORCEMENT

For Plaintiff

17 BY: STEPHAN J. SCHLEGELMILCH, Asst. Chief Litigation Counsel
DAVID S. MENDEL, Asst. Chief Litigation Counsel
18 LAURA D'ALLAIRD, Counsel

19 COOLEY LLP

Attorneys for Defendant

20 BY: PATRICK GIBBS, ESQ.
LUKE T. CADIGAN, ESQ.
21 JULIANNE LANDSVIK, ESQ.

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1 THE COURT: Securities and Exchange Commission is
2 represented here by Stephan Schlegelmilch.

3 MR. SCHLEGELMILCH: That's correct, your Honor.

4 THE COURT: Good afternoon.

5 David Mendel?

6 MR. MENDEL: Yes, your Honor.

7 THE COURT: Good afternoon.

8 MR. MENDEL: Good afternoon.

9 THE COURT: And Laura D'Allaird.

10 MS. D'ALLAIRD: Yes, your Honor.

11 THE COURT: Good afternoon.

12 MS. D'ALLAIRD: Good afternoon.

13 THE COURT: And KIK Interactive is represented by
14 Patrick Gibbs.

15 MR. GIBBS: Yes, your Honor.

16 THE COURT: Good afternoon, Mr. Gibbs.

17 And Mr. Cadigan.

18 MR. CADIGAN: Yes, your Honor.

19 THE COURT: Good afternoon.

20 I called you in because with all the pages of fighting
21 that you described in your joint letter of January 14, I really
22 didn't understand the discovery dispute. We're supposed to end
23 discovery this week, right, Mr. Schlegelmilch?

24 MR. SCHLEGELMILCH: I believe, your Honor, it's the
25 28th, so a week from yesterday.

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1 THE COURT: Okay. A 30(b)(6) deposition will not let
2 you finish by the 28th.

3 MR. SCHLEGELMILCH: That's correct, your Honor.

4 THE COURT: So why should I allow it?

5 MR. SCHLEGELMILCH: Well, your Honor, we have been
6 seeking this deposition since -- it was first noticed for
7 November, the week of Thanksgiving, and we've been in
8 disagreement about it sort of ever since, trying to --

9 THE COURT: So that's what my job is, isn't it, to
10 resolve disputes?

11 MR. SCHLEGELMILCH: Yes, your Honor.

12 THE COURT: If you don't bring the dispute to me, I
13 can't resolve it, can I?

14 MR. SCHLEGELMILCH: Well, then we would ask for relief
15 from your scheduling order so we can complete the deposition.

16 THE COURT: You're not getting it. The purpose of
17 discovery is to prepare for trial. You've had enough time. In
18 fact, I think it was you who set the schedule.

19 MR. SCHLEGELMILCH: We did jointly, your Honor, with
20 the understanding -- and that letter, which we submitted to
21 your Honor last week, cites this outstanding discovery issue
22 that we would bring before you.

23 THE COURT: How many depositions have you taken so
24 far, roughly?

25 MR. SCHLEGELMILCH: Roughly? I think five. No. You

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1 mean collectively, your Honor?

2 THE COURT: You.

3 MR. SCHLEGELMILCH: Five. Around five. Five or six.
4 Mr. Mendel probably could --

5 THE COURT: Why is that not sufficient to make your
6 case?

7 MR. SCHLEGELMILCH: Your Honor, the case law that we
8 put in front of the Court makes clear that Rule 30(b)(6)
9 depositions are a unique animal.

10 THE COURT: I know what 30(b)(6) depositions are. The
11 point is, why didn't you make your case out of the five
12 depositions you took? Or schedule a 30(b)(6) earlier? Or
13 start with a 30(b)(6)? You're using, as Mr. Gibbs points out,
14 30(b)(6) as like a request for admission.

15 MR. SCHLEGELMILCH: Well, your Honor, I mean, as you
16 well know, the rules permit the parties to use a 30(b)(6)
17 deposition --

18 THE COURT: It's with my discretion. And exercising
19 my discretion, I think you've taken long enough. If there's
20 anything in particular, you might dissuade me, but generally,
21 which is what you're doing, you don't dissuade me.

22 MR. SCHLEGELMILCH: I'm not quite sure how to respond
23 to that, your Honor. We would just submit that we tried to
24 bring this matter before your Honor as expeditiously as
25 possible, while at the same time trying to resolve it without

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1 court intervention, and this was when we were able to bring it
2 before your Honor, and I apologize for the delay. That was not
3 our intent. I think our hope was that we could --

4 THE COURT: You're not answering my question. What
5 specifically do you need?

6 MR. SCHLEGELMILCH: Specifically, KIK has made a
7 number of arguments in its answer, and in places like that,
8 your Honor, that the Commission has been cherry-picking
9 statements of KIK.

10 THE COURT: So what?

11 MR. SCHLEGELMILCH: Well, it's difficult to refute an
12 argument of cherry-picking if KIK won't confirm the universe of
13 public statements that KIK has made regarding the offerings
14 against which our supposedly cherry-picked statements are to be
15 judged. So a number of the topics in the 30(b)(6) that's in
16 front of your Honor today deal with nailing down exactly what
17 public statements KIK made regarding the offerings, to rebut
18 KIK's contention, in its answer and otherwise, that the
19 Commission simply cherry-picked statements regarding the
20 offerings.

21 THE COURT: If you cherry-pick, KIK statements are
22 irrelevant. Cherry pick means that you had any number, you had
23 an array of cases from which to choose and you decided to go
24 after KIK for some arbitrary reason.

25 MR. SCHLEGELMILCH: I think KIK's argument, as I

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1 understand it, regarding cherry-picking has to do with which
2 statements we identified in the complaint, which statements of
3 KIK's we identified in the complaint, that --

4 THE COURT: Pick any ones you want. The question of
5 this case is whether what they're doing is a security or not,
6 right?

7 MR. SCHLEGELMILCH: Absolutely, your Honor.

8 THE COURT: And what's cherry-picking got to do with
9 that?

10 MR. SCHLEGELMILCH: Because one of the indicia that
11 your Honor will consider in whether KIK marketed, offered, and
12 sold the security was what they said about the token when they
13 sold it. KIK's contention, as I understand it from their
14 answer --

15 THE COURT: You know all the statements they made when
16 they sold it.

17 MR. SCHLEGELMILCH: That's exactly what we don't know,
18 and which KIK has so far not confirmed, and KIK has rebuffed
19 discovery on that. They say we cherry-picked, but we don't
20 know the universe of statements from which we're supposed to
21 draw --

22 THE COURT: I don't understand how you could be
23 accused of cherry-picking and --

24 MR. SCHLEGELMILCH: I'm in agreement with that, your
25 Honor.

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1 THE COURT: Let's say they made 15 statements, of
2 which two fit into the kinds of statements you're interested
3 in, offering to sell a security. What do you care about the
4 other 13?

5 MR. SCHLEGELMILCH: I don't --

6 THE COURT: Or let's say 15 were made that way and you
7 picked two. What's the difference?

8 MR. SCHLEGELMILCH: I think that's exactly the right
9 way to look at it. What I'm --

10 THE COURT: Then you don't need depositions.

11 MR. SCHLEGELMILCH: We also have, in the depositions
12 of individuals that we have conducted, been confronted with, as
13 you are in any deposition of individuals, lapses in memory. A
14 great example of this is Mr. Livingston's testimony during the
15 investigation.

16 THE COURT: Who is Mr. Livingston?

17 MR. SCHLEGELMILCH: Mr. Livingston is KIK's CEO.

18 THE COURT: Okay. What did he not remember?

19 MR. SCHLEGELMILCH: During that deposition we asked --
20 or that testimony we asked Mr. Livingston about his appearance
21 on CNBC on the day that KIK announced the token offering, and
22 Mr. Livingston stated that he could not recall being on CNBC.

23 THE COURT: Presumably you have a transcript of what
24 he said.

25 MR. SCHLEGELMILCH: We have the transcript and we have

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1 a video.

2 THE COURT: What do you care if he remembers or not?
3 Apparently you can use it as a means of impeaching him if he
4 ever testifies.

5 MR. SCHLEGELMILCH: That is correct, your Honor.

6 THE COURT: What else do you need? So far you haven't
7 convinced me.

8 MR. SCHLEGELMILCH: The other topic which I understand
9 last night KIK offered to provide would be information
10 regarding KIK's present status as an entity, as a business, how
11 much cash they have, what they're up to, what they're doing.
12 As you'll recall from the complaint, KIK still controls
13 30 percent of the outstanding float of the tokens, 3 trillion
14 coins, and your Honor, if we do prevail, if we prevail and you
15 find this is a security, that it was an unregistered offering,
16 we'll be asking the Court to enter an injunction. One of the
17 showings we'll need to make to your Honor is that there is a
18 risk of a violation in the future, and your Honor, we --

19 THE COURT: They've been selling up to date, haven't
20 they, or you don't know?

21 MR. SCHLEGELMILCH: I don't know, your Honor. My
22 understanding is that they still own the 3 trillion tokens, but
23 I would -- that's my understanding, and I would like to be able
24 to ask questions about what their plans are for the 3 trillion
25 tokens.

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1 THE COURT: Have you asked witnesses that question?

2 MR. SCHLEGELMILCH: The witnesses that we have asked,
3 that we have conducted depositions of to date, from the last
4 time we were in here till present, are not current employees of
5 KIK, so they don't know.

6 THE COURT: Why did you not take a deposition of
7 current employees?

8 MR. SCHLEGELMILCH: Because we were hoping to take a
9 Rule 30(b)(6) deposition on November 26th --

10 THE COURT: Who would know the answer to that
11 question?

12 MR. SCHLEGELMILCH: I expect that Mr. Livingston would
13 know the answer to that question. I expect that --

14 THE COURT: Well, get Mr. Livingston back.

15 MR. SCHLEGELMILCH: If he would appear for a
16 deposition, yes, your Honor.

17 THE COURT: All right. Anything else you want to ask
18 Mr. Livingston?

19 MR. SCHLEGELMILCH: Not that I haven't covered, your
20 Honor.

21 THE COURT: Well, Mr. Gibbs, could we have
22 Mr. Livingston come back and testify to the issues that
23 Mr. Schlegelmilch has outlined?

24 MR. GIBBS: Well, if so ordered, but I don't think
25 it's necessary, for a few reasons. First of all, I told

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1 Mr. Schlegelmilch directly, repeatedly, that KIK still owns the
2 3 trillion Kin. They haven't sold any since this whole process
3 began.

4 THE COURT: But you're not a witness. You don't want
5 to be a witness, do you?

6 MR. GIBBS: Excuse me?

7 THE COURT: You don't want to be a witness, do you?

8 MR. GIBBS: I don't, but it's a simple fact and we can
9 stipulate to it. They don't need to convene a deposition and
10 force me to travel to DC and force my client to travel --

11 THE COURT: They don't need to stipulate to your
12 version of the facts. That's not right.

13 MR. GIBBS: But my version of the facts --

14 THE COURT: Who do you not want to travel to
15 Washington, DC?

16 MR. GIBBS: Me and the CEO, neither of whom lives in
17 Washington, DC.

18 THE COURT: Where does he live?

19 MR. GIBBS: He lives in Canada, outside of Toronto; I
20 live and work in California.

21 It's a simple question. We can put it under oath.
22 It's a fact.

23 THE COURT: Anybody else who would be able to testify
24 who lives more closely to DC?

25 MR. GIBBS: I'm sure there are other people who could

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1 testify. None of them live near Washington, DC. They would
2 all have to travel for -- if it really is limited to this
3 issue, it's a ten-minute deposition. I can't for the life of
4 me understand why that's worth the cost to all parties when
5 it's a simple fact.

6 THE COURT: Would you like to have the deposition
7 taken in Buffalo, New York?

8 MR. GIBBS: I would have to check whether that travel
9 is more convenient. I suspect it is, but I don't know.

10 THE COURT: Probably not. There are probably lots of
11 planes going from Toronto to Washington DC, more so than
12 Buffalo. Doesn't snow as much in Washington DC.

13 MR. GIBBS: We'd love to host everybody out in
14 California. The weather is very nice.

15 THE COURT: Maybe next week. Is there a date next
16 week you can have Mr. Livingston come in?

17 MR. GIBBS: I don't know what his schedule is.

18 THE COURT: How about Wednesday?

19 MR. GIBBS: Your Honor, I don't know.

20 THE COURT: Well, seems to me he might need to make
21 himself available.

22 MR. GIBBS: Could we do it telephonically? It's a
23 simple question --

24 THE COURT: Nothing is so simple. You want to do it
25 telephonically?

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1 MR. GIBBS: That would be vastly preferable for us,
2 but honestly, your Honor, do they hold the 3 trillion Kin?
3 Yes. Do they have a plan for what to do with it? The answer
4 is, not yet, they don't know what they're going to do with it
5 because we don't know what they can do. Simple question.

6 I should note, by the way, your Honor, they had
7 noticed Mr. Livingston's deposition; my team and I had already
8 flown, and Mr. Livingston had already flown, to Washington, DC
9 to prep him, and the SEC decided at the last minute to withdraw
10 that notice. They made that decision. They know full well he
11 could have answered these questions.

12 THE COURT: Mr. Schlegelmilch, can you explain that.

13 MR. SCHLEGELMILCH: Yes, your Honor. That is correct.
14 We had tried to negotiate a stipulation to cancel
15 Mr. Livingston's deposition the week earlier but couldn't make
16 it work. So that's correct. But I will say that we agreed to
17 cancel Mr. Livingston's deposition with the understanding that
18 we had at that time already noticed KIK's 30(b)(6) deposition
19 for November the 26th.

20 THE COURT: Well, that wasn't right. He was there.

21 MR. SCHLEGELMILCH: Well, I didn't know he was there
22 already. But --

23 THE COURT: You didn't know he was in Washington?

24 MR. SCHLEGELMILCH: I did not, your Honor.

25 THE COURT: You thought he was still in Toronto when

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1 you canceled?

2 MR. SCHLEGELMILCH: I did, your Honor. I canceled it
3 so he wouldn't have to travel.

4 THE COURT: Take the deposition on Wednesday in DC or
5 a proximate date that's reasonably convenient to
6 Mr. Livingston.

7 MR. SCHLEGELMILCH: I know I'm looking a gift horse in
8 the mouth. May I have one additional request. And that would
9 be that Mr. Livingston be prepared to talk about all of these
10 issues, the issues of the KIK's current condition --

11 THE COURT: KIK's current condition.

12 MR. SCHLEGELMILCH: Yes, your Honor.

13 THE COURT: Do you have someone else that would know
14 more than Mr. Livingston, Mr. Gibbs?

15 MR. GIBBS: Probably, but I don't know what
16 Mr. Schlegelmilch means by "current condition."

17 THE COURT: He wants to know what your business is
18 right now, what you're doing right now. You have the CEO, you
19 take the CEO. If he doesn't know, you'll come back to me and
20 I'll give you somebody else. Take the CEO, take
21 Mr. Livingston, on Wednesday or a date proximate to that or
22 some other person who you can convince Mr. Schlegelmilch that
23 would know.

24 MR. GIBBS: I was just going to ask that, your Honor.
25 We're here to talk about a 30(b)(6) notice. If that's the

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1 case, I think we should be able to designate whoever we want,
2 as long as they can answer the questions, as best we understand
3 them. I still think it's too vague.

4 THE COURT: Take Mr. Livingston's. He's the CEO. He
5 should know what's going on. If he doesn't know, that's an
6 interesting point.

7 MR. GIBBS: He'll know --

8 THE COURT: He doesn't have to study. He doesn't have
9 to prepare. You have to prepare. He doesn't have to prepare.

10 MR. GIBBS: It's because of Mr. Schlegelmilch that we
11 will make sure we prep him because he wants to be able to come
12 back and say we didn't prep him if there are any questions he
13 didn't answer. That's exactly the exposure he's going to set
14 up for us.

15 THE COURT: You do what you want with your witness.
16 If you want to prepare him, prepare him. If you don't want to,
17 don't prepare him. If he doesn't want to be prepared, he won't
18 be prepared. He's your client.

19 MR. GIBBS: He'll be prepared.

20 THE COURT: A Wednesday deposition, or let Mr. Gibbs
21 give you another date say within ten days of that date.

22 MR. GIBBS: And just to be clear, your Honor, this is
23 limited to the question of KIK's current conditions and
24 financial conditions and operations, including the two specific
25 questions that Mr. Schlegelmilch has identified here in court.

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1 THE COURT: Define what you want.

2 MR. SCHLEGELMILCH: KIK's current -- what is KIK doing
3 as a business currently, what is it working on. I understand
4 that there is a new entity that's been formed under Canadian
5 law called Code Inc. What is the relationship between Code
6 Inc. and KIK? What assets does KIK have that could satisfy a
7 disgorgement order or a penalty that we would ask your Honor to
8 impose --

9 THE COURT: That's supplementary proceedings. That's
10 not this.

11 MR. SCHLEGELMILCH: And what would be KIK's -- what
12 is --

13 THE COURT: When is the last time you know something
14 about KIK's business?

15 MR. SCHLEGELMILCH: Probably -- not in an admissible
16 form, but we have some Rule 408 materials from prior to --
17 during the investigative period, your Honor.

18 THE COURT: When is that?

19 MR. SCHLEGELMILCH: It would be from fall 2018, your
20 Honor.

21 THE COURT: You could ask what KIK's been doing from
22 that time to this time, including any affiliates or
23 subsidiaries or other related companies.

24 MR. SCHLEGELMILCH: Understood, your Honor.

25 MR. GIBBS: May I speak to that, your Honor.

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1 THE COURT: Yes.

2 MR. GIBBS: The rationale that Mr. Schlegelmilch gave
3 you for this entire line of questioning was their desire to
4 seek injunctive relief to prevent future violations of the
5 federal securities laws. I don't see what some separate entity
6 and what that entity may or may not be doing has to do with
7 that relief. And also, it's a very good illustration of the --

8 THE COURT: You may be right, or they may be
9 sufficiently connected that you're wrong. He can do it.

10 Okay. Finished?

11 MR. SCHLEGELMILCH: Yes, your Honor.

12 THE COURT: Anything more, Mr. Gibbs?

13 MR. GIBBS: No, your Honor.

14 THE COURT: Okay. That's done. What happens after
15 that?

16 MR. SCHLEGELMILCH: Then --

17 THE COURT: Expert report. Why do you need an expert
18 report?

19 MR. SCHLEGELMILCH: Your Honor, if you find during
20 summary judgment that there is a material question of fact, we
21 would like to present this case to the jury with the help --

22 THE COURT: Maybe you should wait for summary judgment
23 first.

24 MR. SCHLEGELMILCH: If that's what your Honor would
25 order.

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1 THE COURT: I want to find out. What do you want from
2 your expert? That's not a question of law.

3 MR. SCHLEGELMILCH: For example, we have an expert
4 that is an expert in finance technology, in how the blockchain
5 works, to explain how the blockchain works to lay members of
6 the jury, to explain --

7 THE COURT: It's an injunction case, isn't it?

8 MR. SCHLEGELMILCH: It is, your Honor, but it's also
9 one that I think --

10 THE COURT: It's a disgorgement case.

11 Okay. That's legitimate. They'll explain blockchain.
12 But it doesn't tell me or the jury what Section 5 requires.

13 MR. SCHLEGELMILCH: That is not my goal at all.

14 THE COURT: Okay. But that's not necessary for
15 summary judgment. That's only necessary if you don't get
16 summary judgment.

17 MR. SCHLEGELMILCH: We can do it in whatever order.
18 This is sort of the way we always do it, but we can do it in
19 whatever order you would prefer, your Honor.

20 THE COURT: What would you like, Mr. Gibbs?

21 MR. GIBBS: Your Honor, I think we would be fine with
22 holding off expert discovery and doing summary judgment first,
23 because I agree with your Honor. I don't think any expert
24 testimony is going to affect summary judgment.

25 And if I may, your Honor, I just want to put a pin in

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1 this one further issue on the deposition I forgot to follow up
2 on with the Court.

3 THE COURT: Okay. Go ahead.

4 MR. GIBBS: May I?

5 THE COURT: Yes.

6 MR. GIBBS: Just so that people can make reasonably
7 solid travel plans, given what I think should be a relatively
8 narrow scope of this deposition, may we set a time limit of
9 something like two or three hours?

10 THE COURT: No. I don't set time limits, but counsel,
11 if he's repetitive, will not be acting properly and I'll take
12 that into consideration.

13 MR. GIBBS: Well --

14 THE COURT: I'm not assigning an arbitrary time limit.

15 MR. GIBBS: That's fine, your Honor.

16 THE COURT: I never do, and I don't believe in it.

17 MR. GIBBS: That's fine. I understand.

18 I have a follow-up question about scope, because now
19 I'm a little bit confused about whether we're talking --

20 THE COURT: The scope is to find out what KIK did from
21 the time that the investigation ended until now.

22 MR. GIBBS: My question is whether the rules should
23 be -- we should assume we're operating under Rule 30(b)(6),
24 meaning this deposition is limited to that scope --

25 THE COURT: No. I think Mr. Livingston is a witness.

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1 Tell us what he knows. If he doesn't know, it will be very
2 surprising to me, since he's the CEO of the company. And if he
3 doesn't know, Mr. Schlegelmilch should come back to me and
4 maybe I'll give him somebody else.

5 MR. GIBBS: But, your Honor, if he's appearing as a
6 fact witness, now I need to prep him on the entire scope of the
7 case, which is what we were fully prepared to do back in
8 November when the SEC --

9 THE COURT: I think I've heard enough. You can take
10 the deposition Wednesday. Let's finish with it.

11 Most of the summary judgment wants me to determine
12 that Section 5 is applicable.

13 MR. SCHLEGELMILCH: Yes, your Honor.

14 THE COURT: And you have all the facts necessary to
15 prove that, don't you?

16 MR. SCHLEGELMILCH: That's our view, your Honor.

17 THE COURT: So why go through the bother and expense
18 of experts to tell the jury what a blockchain is when you can
19 tell me in your brief?

20 MR. SCHLEGELMILCH: I completely agree with you
21 regarding the blockchain expert.

22 Mr. Mendel just reminded me that we have a potential
23 additional expert who has -- one of the issues you're going to
24 have to decide, your Honor, is how KIK offered and sold, having
25 marketed the --

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1 THE COURT: It's a question of fact.

2 MR. SCHLEGELMILCH: It is, and we are exploring having
3 an expert that is an expert in marketing to talk about an
4 objective view of what KIK said when it offered and sold these
5 tokens, and you may find that informative --

6 THE COURT: Objective view of what someone said?

7 MR. SCHLEGELMILCH: Yes, your Honor.

8 THE COURT: The objective view of what someone said is
9 what someone said.

10 MR. SCHLEGELMILCH: Yes, your Honor. And we --

11 THE COURT: The inference to be taken from that
12 belongs to me, or the jury, as the fact finder.

13 MR. SCHLEGELMILCH: Understood, your Honor. I think
14 it would be akin to a survey, a marketing expert in a trademark
15 infringement case that might testify regarding market
16 confusion. That would be admissible evidence on what an
17 objective --

18 THE COURT: Section 5 doesn't turn on market
19 confusion.

20 MR. SCHLEGELMILCH: Correct.

21 THE COURT: Section 5 turns on whether or not a
22 security is involved.

23 MR. SCHLEGELMILCH: Correct. Absolutely, your Honor.

24 THE COURT: You folks are going to be arguing under
25 SEC and how it views that.

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1 MR. SCHLEGELMILCH: Yes, your Honor.

2 THE COURT: You don't need an expert.

3 All right. Go off the record. Talk to Mr. Gibbs.

4 Assuming that you're going to finish discovery on January 28,
5 fact discovery on January 28 or reasonably soon after, come
6 back and give me the dates that you're going to file, that
7 Mr. Gibbs is going to oppose.

8 Are you going to make any motions also, Mr. Gibbs?

9 MR. GIBBS: Yes, your Honor.

10 THE COURT: All motions will have to be filed on the
11 same day.

12 MR. GIBBS: Yes, your Honor.

13 THE COURT: If you're going to make a motion, you have
14 the same filing date as Mr. Schlegelmilch.

15 MR. GIBBS: Understood, your Honor.

16 THE COURT: All right. Off the record. Go ahead and
17 talk.

18 (Counsel conferring)

19 THE COURT: Yes, Mr. Schlegelmilch.

20 MR. SCHLEGELMILCH: Your Honor, we would propose
21 opening briefs be due on March 20, which is a Friday.

22 THE COURT: Motion has to be filed, with supporting
23 briefs, by March 20. All motions.

24 MR. SCHLEGELMILCH: Thank you, your Honor.

25 THE COURT: And opposition?

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1 MR. SCHLEGELMILCH: April 24.

2 THE COURT: Reply?

3 MR. SCHLEGELMILCH: May 13.

4 THE COURT: Too long.

5 MR. SCHLEGELMILCH: May 8th.

6 THE COURT: May 8th. Okay.

7 All motions and supporting papers are to be filed by
8 March 20; opposition is by April 24; reply is by May 8th.

9 MR. SCHLEGELMILCH: Thank you, your Honor.

10 THE COURT: That's going to follow your deposition,
11 which will be a witness deposition of Mr. Livingston.

12 MR. GIBBS: Your Honor, I've conferred with
13 Mr. Schlegelmilch during the break. I think the person best
14 equipped to answer what I think are the questions he wants to
15 ask is Mr. Tanner Philp, P-H-I-L-P.

16 THE COURT: Say again louder.

17 MR. GIBBS: The person I think is best equipped to
18 answer the questions I think Mr. Schlegelmilch wants to ask is
19 Tanner Philp. T-A-N-N-E-R --

20 THE COURT: T-A-N-N-E-R? What's the first name?

21 MR. GIBBS: That's the first name. The last name is
22 Philp, P-H-I-L-P.

23 THE COURT: P-H-I?

24 MR. GIBBS: L-P. P-H-I-L-P. Philp. I've conferred
25 with Mr. Schlegelmilch --

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1 THE COURT: What's his position?

2 MR. GIBBS: I don't remember his precise title, but
3 Mr. Schlegelmilch has taken testimony from him before.

4 MR. SCHLEGELMILCH: What I would say, your Honor, is I
5 don't know Mr. Philp's exact title either, but I do know from
6 the investigation that he has the relevant information.

7 THE COURT: He has to consent, and the company has to
8 consent that he'd be a 30(b)(6) witness.

9 MR. GIBBS: That's fine, your Honor. I just need to
10 know whether it's a 30(b)(6) or an individual.

11 THE COURT: I think for Mr. Tanner, you want a
12 30(b)(6) deposition.

13 MR. SCHLEGELMILCH: Understood, your Honor.

14 THE COURT: So it will be a 30(b)(6) deposition of
15 Mr. Tanner Philp. If there's any objection by the company or
16 Mr. Philp, that should be conveyed to Mr. Schlegelmilch by
17 close of business tomorrow: And the subject will be the nature
18 of the business of defendant KIK Interactive Inc., from what
19 date?

20 MR. SCHLEGELMILCH: Your Honor, I don't have a
21 specific date in 2018. My request would be --

22 THE COURT: From 2018 through the current date.

23 MR. SCHLEGELMILCH: Thank you, your Honor.

24 THE COURT: Including any business conducted through
25 affiliates or the like. Okay? And that deposition will take

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1 place Wednesday?

2 MR. GIBBS: Subject to witness availability, your
3 Honor.

4 MR. SCHLEGELMILCH: Yes.

5 THE COURT: Or another date that you choose reasonably
6 proximate to it.

7 MR. SCHLEGELMILCH: Thank you, your Honor.

8 THE COURT: And I think we're finished. Thank you
9 very much.

10 ALL COUNSEL: Thank you, your Honor.

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